

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RANDY ABBAS,

Plaintiff,

-against-

HESTIA TOBACCO, LLC; and DAVID SLEY,

Defendants.

No. 1:18-cv-05151-ENV-RER

**OBJECTION TO REPORT AND RECOMMENDATION OF THE HONORABLE
RAMON E. REYES, U.S.M.J., DATED AUGUST 28, 2020 [Docket No. 33]**

On August 28, 2020, the Honorable Ramon E. Reyes, U.S.M.J., issued his Report and Recommendation [Docket No. 33] (the “August 28th Report and Recommendation”), reporting on Plaintiff Randy Abbas’ (“Abbas”) Motion for Default Judgment against defendants Hestia Tobacco, LLC (“Hestia”) and David Sley (“Sley”) [Docket No. 31] (the “Motion for Default Judgment”).

By the August 28th Report and Recommendation, Judge Reyes recommended that (1) the motion be denied with leave to renew upon filing of proof of service of the Motion for Default Judgment; or (2) “should Plaintiff subsequently file proof of service of the Motion—I recommend that the motion be granted.” [Docket No. 33, p. 2]

Subsequent to the August 28th Report and Recommendation, on September 3, 2020, Plaintiff, by its counsel, filed a letter [Docket No. 34] (the “Letter”) explaining that Plaintiff had not served the Motion for Default Judgment on Defendants because “after Defendants’ counsel withdrew from this action, Defendants did not enter an appearance *pro se* or by counsel or otherwise provide Plaintiff with updated contact information.” By the letter, Plaintiff requested that (1) the Court extend the time for Plaintiff to serve upon the Defendants the August 28th Report

and Recommendation, so that Plaintiff could attempt to locate Defendants, and (2) that Plaintiff be permitted to make service by email upon Defendants if they could not otherwise be located. By docket entry, the court granted Plaintiff permission to serve a copy of the August 28th Report and Recommendation “on David Sley at his last known email address and Hestia Tobacco, LLC, at the email address listed on the company’s website, info@HestiaTobacco.com.”

Service of Defendants

As set forth in detail in Plaintiff’s affirmation of service, dated September 28, 2020 [Docket No. 36] (the “Affirmation of Service”), Plaintiff has made extensive efforts to not only serve Defendants with the August 28th Report and Recommendation, but also with the Motion for Default Judgment, and the Letter (the “Served Documents”).

As set forth in the Affirmation of Service, Plaintiff was able to successfully serve Defendants with the Served Documents by (1) personal service; (2) email service; (3) United States Postal Service, Priority Mail; and (4) Federal Express. Confirmations evidencing the successful service are attached to the Affirmation of Service. All emails were successfully delivered with no bouncebacks.¹

Thus, Defendants have now been served with August 28th Report and Recommendation, but also with the Motion for Default Judgment, and the Letter, and have not submitted any filings opposing the Motion for Default Judgment.

Defendant Sley first received notice of the August 28th Report and Recommendation by email dated September 8, 2020, and Defendant Hestia first received notice by email dated September 9, 2020. Exh. A.

¹ The email to info@HestiaTobacco.com initially bounced back due to a typo, which was later corrected in the version annexed hereto as Exhibit A.

Both Defendants were personally served with the August 28th Report and Recommendation on September 15, 2020, with copies sent by first class mail on September 16, 2020, and by certified return receipt requested mail on September 17, 2020. [Docket No. 36, Exh. A]

Both Defendants were served by with the Served Documents by email, which was sent on September 17, 2020, and did not bounce back. [Docket No. 36, Exh. B]

Both Defendants were served by with the Served Documents by United States Postal Service, Priority Mail which was delivered on September 21, 2020. [Docket No. 36, Exh. C]

Both Defendants were served by with the Served Documents by Federal Express, which was delivered on September 18, 2020. [Docket No. 36]

Thus, Defendants have had actual notice of the Motion for Default since September 8, 2020—nearly a month—and have not submitted any opposition papers.

Request for Relief

Plaintiff does not object to the findings in the “Liability” portion of the August 28th Report and Recommendation.

Plaintiff objects, however, to the finding in the August 28th Report and Recommendation that it failed to provide Defendants with notice of the Motion for Default Judgment. [Docket No. 33, pp. 6-7]

As set forth above in detail, and in the Affirmation of Service [Docket No. 36], because (1) Plaintiff has, in accordance with the Court’s docket entry in response to the Letter, served Defendants—repeatedly—by many different means, with the Motion for Default Judgment, (2) Defendants have had actual notice of the Motion for Default Judgment since September 8, 2020, but have not filed any papers in opposition, Plaintiff respectfully requests that the Court grant the Motion for Default Judgment.

New York, New York
October 2, 2020

FisherBroyles LLP

/s/ Richard B. Cohen, Esq.
Richard B. Cohen, Esq.
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New York, New York 10022
Richard.Cohen@FisherBroyles.com
(212) 247-6122

Exhibit A

From: [CarolAnn Harkavy](#)
To: [Christina Bost Seaton](#)
Subject: FW: Abbas v. Hestia Tobacco LLC et al
Date: Wednesday, September 09, 2020 11:53:16 AM
Attachments: [33 2020-08-28 Abbas v Hestia Tobacco LLC et al.pdf](#)

CarolAnn Harkavy

Paralegal to Amy Epstein Gluck, Christina H. Bost Seaton, Richard B. Cohen, and Tony Onorato

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direct: +1.908.881.6149

carolann.harkavy@fisherbroyles.com

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From: CarolAnn Harkavy
Sent: Tuesday, September 8, 2020 2:43 PM
To: 'd@sley.co' <d@sley.co>; 'david@hestiatobacco.com' <david@hestiatobacco.com>; 'info@HestiaTobacco.com.' <info@HestiaTobacco.com.>
Cc: Richard Cohen <richard.cohen@FisherBroyles.com>
Subject: Abbas v. Hestia Tobacco LLC et al

Please see attached Report & Recommendation.

CarolAnn Harkavy

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From: [CarolAnn Harkavy](#)
To: info@HestiaTobacco.com
Cc: [Richard Cohen](#); [Christina Bost Seaton](#)
Subject: Abbas v. Hestia Tobacco LLC et al
Date: Wednesday, September 09, 2020 12:58:31 PM
Attachments: [33 2020-08-28 Abbas v Hestia Tobacco LLC et al.pdf](#)

Please see attached Report & Recommendation.

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